

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 29 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0121-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
CARLOS GERARDO VASQUEZ,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20082642

Honorable Christopher Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Carlos Gerardo Vasquez

San Luis  
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Carlos Vasquez seeks review of the trial court's order summarily denying his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Vasquez was convicted pursuant to a plea agreement of attempted possession of a narcotic drug for sale and was sentenced to a partially aggravated six-year prison term. He filed an of-right petition for review arguing insufficient evidence supported the sentencing court's finding that Vasquez's criminal history was an aggravating factor. The court summarily denied that petition and, on his petition for review filed in this court, we denied relief. *State v. Vasquez*, No. 2 CA-CR 2010-0204-PR (memorandum decision filed Oct. 26, 2010).

¶3 Vasquez filed an additional notice and petition for post-conviction relief, asserting that, because his plea agreement stated that all other charges and allegations were dismissed, (1) the trial court was not permitted to find as aggravating factors his criminal history and the presence of a firearm during his commission of the offense, and (2) the prosecutor committed misconduct by arguing the application of those factors at sentencing, rendering Vasquez's plea involuntary. He additionally asserted his trial and Rule 32 counsel were ineffective for failing to raise those claims. The trial court first determined that, pursuant to this court's recent decision in *Osterkamp v. Browning*, 226 Ariz. 485, 250 P.3d 551 (App. 2011), Vasquez was entitled to appointed counsel "to assist him in asserting his claim of ineffective assistance of his Rule 32 counsel." The trial court summarily denied the remainder of Vasquez's claims and appointed counsel to represent Vasquez on his claim of ineffective assistance of Rule 32 counsel.

¶4 In his petition for review, Vasquez reurges his claims, again grounded in his assertion that the plea agreement precluded the application of aggravating factors to his sentence. We first observe that the trial court did not rule on Vasquez's claim of

ineffective assistance of Rule 32 counsel. Thus, that claim is not before us, and we do not consider it. As to his remaining claims, the trial court did not err in summarily denying them. Vasquez's claims plainly are precluded by Rule 32.2(a)(3) because they were not raised in his of-right petition for post-conviction relief. Although the trial court discussed the merits of Vasquez's claims, it need not have done so, and we may affirm the court's ruling for any reason supported by the record. *See State v. Olquin*, 216 Ariz. 250, n.5, 165 P.3d 228, 231 n.5 (App. 2007).

¶5 Although we grant review, for the reasons stated, we deny relief.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge